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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No.783 of 2001

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Reserved on: March 01, 2012
Pronounced on: March 30, 2012

DALBIR SINGH

. . . PETITIONER

Through: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. S.K. Das,
Advocate.

VERSUS

GOVT. OF NCT OF DELHI & ORS.

. . . RESPONDENTS

Through: Mr. Aditya Madan, Advocate
for respondent No.1 to 3.
Mr. G.D. Gupta, Sr. Advocate
with Mr. Pramod Gupta,
Advocate for respondent Nos.
4 & 5.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, Acting Chief Justice

1. This case has checkered history inasmuch as there have been various litigations between the parties. The petitioner herein had filed OA No.1972/1996 wherein he had questioned the seniority position assigned to him vis-à-vis other officials in the grade of ₹1640-2900/-. In this petition, he had claimed seniority over respondent No.5 but the respondent No.4 was not the party to those proceedings implying that the respondent No.5 has accepted the seniority above respondent No.4. In this OA, orders dated 27.11.1996 was passed by the learned Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') promoting the official respondents to make promotions subject to the outcome of the said OA. Thereafter, the Department issued Office Order dated 06.5.1997 and promoted respondent Nos. 4 and 5 to the post of Seed Analyst

- and Agronomist (IADP) respectively. Challenging this order, the petitioner filed OA No.1276/1997 (present writ petition arises out of these proceedings).
2. While OA No.1276/1997 was still pending, OA No.1272/1996 came up for hearing before the Tribunal and vide order dated 08.3.2000, the Tribunal allowed the OA in favour of the petitioner directing the respondent Department to reassign the seniority position in the seniority list of the officials in the grade of ₹1640-2900/- after taking into consideration the *ad Hon'ble Court* officiation period of the petitioner on the post of Sr. Demonstrator. While complying with the directions of the learned Tribunal and giving benefit to the petitioner the Department also extended the similar benefit to the respondent No.5 again showing him senior to the petitioner vide re-drawn seniority list dated 25.8.2000, which was made the subject matter of challenge in OA No.1864/2001. The Tribunal dismissed OA No.1864/2001 on merits vide order dated 25.9.2002 and the same was assailed before this Court in W.P.(C) No.3599/2003. This Court vide order dated 20.12.2007 set aside the order of the Tribunal and the respondent Department complied with the same by issuing the seniority list dated 08.6.2009 by which the petitioner became senior to the respondent No.5 having been assigned seniority position at Sl. No.2 over and above the respondent No.5 who has been assigned seniority position at Sl. No.3. The new seniority list has not been challenged by either of the parties and has thus attained finality.
 3. The effect of these proceedings is that the petitioner ranks senior to the respondent No.5.

4. Insofar as OA No.1276/1997 is concerned, it came up for hearing before the Tribunal and has been decided on merits vide order dated 04.1.2001. The Tribunal has dismissed the said OA whereby the petitioner has questioned the promotion of respondent Nos.4 and 5 and claimed that he be promoted. The main reason given by the Tribunal is that the petitioner who was working as Demonstrator was not even eligible for appointment as Seed Analyst and/or Agronomist. It is held that neither in the Recruitment Rules, 1984 nor in the Amended Recruitment Rules, 1997, the post of Senior Demonstrator (which was held by the petitioner) was in the feeder cadre for promotion and therefore, the petitioner did not acquire any legally enforceable challenge to the right of the respondent Nos.4 & 5 to the said post. We may point out here that conscious of the aforesaid fact, the petitioner has also questioned the validity of the aforesaid Rules submitting that there was inconsistency between the provisions of the Amended Rules framed under Article 309 of the Constitution and Rule 20 of the Seed Rules framed under the Seed Act, 1966. The Tribunal repelled this contention also finding no such inconsistency.
5. In this writ petition, impugning the order of the Tribunal, the petitioner has not only sought quashing of the promotion of respondent Nos.4 and 5 with prayer to direct review of said promotion by considering the case of the petitioner, but he has questioned the validity of Recruitment Rules/notification dated 18.2.1997 as well in the following manner:

“(d) May further be pleased to strike down the gazette notification dated 18.2.1997 so far it relates to the laying down of the qualification required for the post of Seed Analyst after declaring the same to be *ultra vires* the provisions of Rule 20 of the Seed Rule, 1968 with the

further direction to reframe the said rule in the light of the provisions of Rule 20 of the Seed Rules, 1968.”

6. Mr. Sudhir Nandrajog, learned Senior Counsel appearing for the petitioner drew our attention to the Notification dated 11.2.1997 vide which amendments to the Rules dated 13.7.1984 regarding method of recruitment and qualifications for appointment to certain posts including Seed Analyst and Agronomist were made. He specifically referred to Column Nos. 11 and 12 of Recruitment Rules of this Amended Recruitment Rules providing for method of recruitment, which read as under:

“Col.11 (Method of recruitment whether by promotion or by deputation/transfer and percentage of the vacancy to be filled by various methods)

**40% promotion.
60% Direct
recruitment**

Col.12 (In case of recruitment by Horticulturist, Farm promotion/deputation/transfer, Manager, Training grades from which Officer (Male), promotion/deputation/transfer to be Fertilizer Inspector and Vijnan Mandir Officer in the scale of pay of **Rs.1640-2900** with 3 years’ regular service in the grade and possessing degree in Agriculture or allied subjects from a recognised University or equivalent.

Note 1: The eligibility list for promotion shall be prepared with reference to the date of completion of the qualifying service in the

respective
grade/post.

Note 2: Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than one year and have successfully completed their probation period, if prescribed."

7. His argument, predicated on the aforesaid provision, was that 40% posts were to be filled up by promotion and in case of promotion, the feeder cadre also included the "grade from which promotion/deputation/transfer to be made" and against this column, pay scale of ₹1640-2900/- was stipulated. He submitted that this Rule clearly provided that a person who was in the grade of ₹1640-2900/- was entitled to be considered for promotion to the post of Agronomist as well as Seed Analyst and since the petitioner was in the said pay scale and was senior to the respondent No.5, he could not have been ignored from consideration. He further submitted that all posts were interchangeable including the Demonstrator held by him and for this reason, which was even admitted by the respondent in its reply, the Department had made combined seniority list for the purpose of promotion. It was also submitted that if the petitioner is not treated in the feeder cadre, then there are no promotional avenue from the post of

Sr. Demonstrator. Even the validity of the Recruitment rules was not question except in the manner stated above.

8. We may record that there may be other contentions in the writ petition, but at the time of arguments, the learned Senior Counsel raised and pressed the aforesaid contention only. We are unable to accept the aforesaid submission of the learned counsel, viz., since post of Sr. Demonstrator carries the pay scale of ₹1640-2900/-, it should be treated as feeder cadre for the post of Seed Analyst/Agronomist. Reading of the Rule extracted above would clearly show that feeder cadre posts are also specifically mentioned in the corresponding column of the Recruitment Rules. Thus, there is a prerequisite that the candidate should hold one of such posts which must be in the grade of ₹1640-2900/-. Thus, both the requirements are to be satisfied. Merely because the petitioner was in the grade of ₹1640-2900/- would not make him eligible for promotion unless he was holding one of the posts which are specifically stipulated in the Recruitment Rules. This becomes clear when we make combined reading of the seniority list and the Recruitment Rules for the post of Horticulturists which was produced at the time of arguments. Two persons whose names are at Sl. No. 4 and 5 in the combined seniority list at the post of Sales Manager (Input Centre, i.e., IC) and F.M.S. (Farm Management Specialist) though they are in the pay scale of ₹1640-2900, they are also not treated as eligible for the promotion, though they were in the same grade of pay. If the contention of the petitioner is accepted, then many other incumbents enjoying the same grade of ₹1640-2900 would also become eligible for

- promotion to the post of Agronomist/Seed Analyst even though they are not in the same line.
9. We, therefore, cannot hold that the post of Sr. Demonstrator is in the feeder line to the post of Agronomist/Seed Analyst. Since the petitioner was not eligible to be considered for promotion, the Tribunal rightly held that the petitioner had no locus to question the promotion of respondent Nos.4 & 5.
10. Insofar as non-availability of the promotional avenue is concerned, the petitioner had not made any specific prayer in this behalf. No doubt, promotional avenue should be provided as impressed upon by the Supreme Court in the case of ***Council of Scientific and Industrial Research and Anr. Vs. K.G.S. Bhatt and Anr.*** (1989) 4 SCC 635. It may also be noted that in order to take care of such a situation, the scheme of Assured Career Progression is also introduced and the petitioner must be getting benefit thereof. In any case, we are not recording any final opinion on this aspect as that is not the subject matter. Since we hold that the petitioner was not eligible for promotion to the post with the respondent Nos.4 and 5, we find no reason to interfere with the orders passed by the learned Tribunal and thus dismiss this petition.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

MARCH 30, 2011

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